

A **EXXONMOBIL EXPLORATION AND PRODUCTION
MALAYSIA INC**

v.

B **PETROKAPAL SDN BHD**

HIGH COURT MALAYA, KUALA LUMPUR
KANG HWEE GEE J
[CIVIL SUIT NO: D8-22-59-2005]
15 FEBRUARY 2007

C ***CIVIL PROCEDURE: Judgments and orders - Enforcement of - Order
for plaintiff to submit documents for inspection - Whether documents for
'purposes of the trial' - Whether defendant should be able to examine
documents - Rules of the High Court 1980, O. 45***

D This was an application by the defendant for an order under
O. 45 of the Rules of the High Court 1980 to fix a time by which
the plaintiff would have to submit four documents for the
inspection of the defendant pursuant to an order made by the late
Justice Dato' Abdul Wahid Said Ahmad. It was the defendant's
E complaint that the plaintiff refused to produce the documents for
the inspection of the defendant contrary to the order of the
court. The defendant thus sought for an order to compel the
plaintiff to comply with the order and to set a time upon which
that order must be obeyed under the said O. 45. This application
F was opposed by the plaintiff on the ground that the order did not
direct production or inspection of the documents the defendant
was seeking to inspect. The plaintiff argued that the order merely
G protested the confidentiality of these documents if and when they
were filed in court.

Held:

(1) From the penultimate sentence of the first paragraph it was
clear that the documents were to be used for the 'purposes
H of the trial.' This would presuppose that the defendant should
be able to examine the documents as otherwise it would not
be in a position to meet any matter pertaining to the
documents in the event that they were produced by the
plaintiff at the trial. The fact that there was a requirement for
I the documents to be sealed in a sealed envelope and filed in

court should not be interpreted as preventing the defendant from inspecting them if required. By construction of the order itself, the defendant should be free to inspect the documents. A

[Inspection to be conducted within 40 days as of the date of this judgment.] B

Legislation referred to:

Rules of the High Court 1980, O. 24 r. 13, O. 45

For the defendant/appellant - S Selvaratnam; M/s Tommy Thomas

For the plaintiff/respondent - Chang Wei Mun; M/s Raja Darryl & Loh C

Reported by Suhainah Wahiduddin

JUDGMENT D

Kang Hwee Gee J:

This Is My Oral Judgment: (*ex-tempore*)

[1] This is an application by the defendant for an order under O. 45 of the Rules of the High Court 1980 to fix a time by which the plaintiff would have to submit four documents for the inspection of the defendant pursuant to an order made by the late Justice Dato' Abdul Wahab bin Said Ahmad. E

[2] The said order obtained by the plaintiff from the late judge read as follows: F

English Translation

IN THE HIGH COURT OF MALAYA AT KUALA LUMPUR (Commercial Division) G

CIVIL SUIT NO. D8-22-59-2005

BETWEEN H

EXXONMOBIL EXPLORATION AND PRODUCTION MALAYSIA INC. ... PLAINTIFF

AND

PETROKAPAL SDN BHD ... DEFENDANT I

A BEFORE THE HONOURABLE JUSTICE
DATO' ABDUL WAHAB BIN SAID AHMAD

THIS 14 AUGUST 2006 IN CHAMBERS

ORDER

B UPON THE APPLICATION of the Plaintiff abovenamed AND
UPON HEARING Mr Chang Wei Mun of counsel for the
Plaintiff and Ms Sitpah Selvaratnam of counsel for the Defendant
IT IS ORDERED:

C 1. That the following documents listed as items 23 to 26 of the
Plaintiff's list of documents dated 9.8.06, namely:

D (a) Production Sharing Contract for the Development and
Production of Petroleum from Offshore Semenanjung
Malaysia Between Petroliam Nasional Berhad And Esso
Production Malaysia Inc And Petronas Carigali Sdn Bhd
(for the Bintang Gas Field) dated 17.11.98;

E (b) Joint Operating Agreement for the Development and
Production of Petroleum from Offshore Semenanjung
Malaysia Between Petroliam Nasional Berhad And Esso
Production Malaysia Inc And Petronas Carigali Sdn Bhd
(for the Bintang Gas Field) dated 17.11.98;

F (c) Production Sharing Contract for the Development and
Production of Petroleum from Offshore Semenanjung
Malaysia Between Petroliam Nasional Berhad And Esso
Production Malaysia Inc And Petronas Carigali Sdn Bhd
(for the Raya Oilfield) dated 17.6.98;

G (d) Joint Operating Agreement for the Development and
Production of Petroleum from Offshore Semenanjung
Malaysia Between Petroliam Nasional Berhad And Esso
Production Malaysia Inc And Petronas Carigali Sdn Bhd
(for the Raya Oilfield) dated 17.6.98,

(the "said Documents") be treated as confidential to be used
only for the purposes of the trial;

H 2. That the said Documents be placed in a sealed envelope
when filed in Court;

I 3. That the Defendant be prohibited from disclosing any of the
said Documents to any third party save where:

(a) such third party properly requires access to the said Documents for the purposes of the trial; and

A

(b) such third party gives a written undertaking to Court not to disclose the said Documents to any party.

4. That third parties shall not be given access to the said Documents as filed in Court without the leave of Court.

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Dated this 14 August 2006

...
SENIOR ASSISTANT REGISTRAR
HIGH COURT, KUALA LUMPUR

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[3] The defendant now complains that the plaintiff refuses to produce the documents for the inspection of defendant contrary to the order of the court. The defendant now seeks an order to compel the plaintiff to comply with the order and to set a time upon which that order must be obeyed under O. 45.

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[4] This application is opposed by the plaintiff on the ground that the order does not direct production or inspection of the documents the defendant is now seeking to inspect. The order merely protects the confidentiality of these documents if and when they are filed in court. When this order was made these four documents were listed in the plaintiff's list of documents together with the notice to inspect. Before inspection took place, the plaintiff filed another affidavit stating that it was no longer willing to allow inspection on grounds of confidentiality.

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Submits: The law as it stands allows a party having served notice to inspect on the other to change its position before inspection takes place. We had done so in this case by affidavit served on the defendant followed up by a letter informing the defendant that it had decided to claim privilege on grounds of confidentiality not to disclose the four documents to third party including the defendant. The plaintiff applied before the 2nd affidavit was filed and obtained the order now in dispute before the late Abdul Wahab bin Said Ahmad J.

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Since we had withdrawn our offer for inspection then O. 24 r. 13 will now apply. Order 24 r. 13 reads as follows:

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A **Production to be ordered only if necessary, etc.**

(1) No order for the production of any documents for inspection or to the Court shall be made under any of the foregoing rules unless the Court is of opinion that the order is necessary either for disposing fairly of the cause or matter or for saving costs.

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(2) Where on an application under this Order for production of any document for inspection or to the Court privilege from such production is claimed or objection is made to such production on any other ground, the Court may inspect the document for the purpose of deciding whether the claim or objection is valid.

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D Submits: The four documents can only be disclosed if the court finds they are necessary for the fair disposal of this action and in the exercise of its discretion the court should take into account the confidentiality of the documents, whether public or third party's interest will be affected by the disclosure and whether certain measures eg, blanking out certain parts can preserve those interests. On the facts the plaintiff's claim premised on the obligation of the defendant in undertaking to perform its duties to deliver materials and supply to the plaintiff's oil rig in a safe manner which it had failed to do thereby causing a collision between the defendant's ship and the plaintiff's hired oil rig. The documents sought for inspection and discovery by the defendant are in fact third party contract between Petronas and the plaintiff which allows the plaintiff to extract oil and gas. They are confidential in the sense that they give the exact coordinates of the location of the oil and gas fields. It also contains the internal pricing mechanism for oil and gas extracted, the amount that can be extracted and the duration for extraction.

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H Submits: The order itself should be interpreted in a manner that would protect the confidentiality of the document if and when they are produced or used in court. The order does not direct the plaintiff to produce these documents for inspection. The words "produce or inspect" is not even found in the order. If the intention was to order production and inspection very simply the order would have so stated.

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Findings And Decision**A**

[5] I agree entirely with the submission of counsel for the plaintiff that the plaintiff may be able to claim privilege from disclosure of the 4 documents under O. 24 r. 13 for the reasons given.

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[6] However, the plaintiff itself had obtained an order from this court (before the late Abdul Wahab bin Said Ahmad J) the effect of which is to dispense with any such privilege.

[7] Given that there is now in existence an order of the court respecting the four documents this application must therefore be resolved by reference to the four corners of that order.

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[8] It is a matter of construction of the order whether the defendant should be allowed to inspect and obtain copies for use at the trial.

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[9] Having examined the court order myself I am certain that the order should allow the defendant to inspect those four documents.

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[10] It is clear from the penultimate sentence of the first paragraph that the documents were to be used for the "purposes of the trial". This would presuppose that the defendant should be able to examine the documents as otherwise it would not be in a position to meet any matter pertaining to the documents in the event that they are produced by the plaintiff at the trial. The fact that para 2 requires the documents to be sealed in a sealed envelope and filed in court should not be interpreted as preventing the defendant from inspecting them if required.

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[11] By the construction of the order itself, the defendant should be free to inspect the documents.

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[12] To preserve the confidentiality of the documents, there should be a further order that the defendant should not be allowed to take any photocopies of the documents.

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[13] There should also be an order that the inspection be conducted at the office of the plaintiff's solicitors with no access to third party.

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A [14] There should also be a further order that the coordinates of the location of the oil and gas fields that may be disclosed in any of the documents be kept concealed from inspection.

B [15] Inspection should be conducted within 40 days as of the date of this judgment.

[16] Costs in the cause.

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